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Attorney for Creditor Plaintiff  
 MARK P. GROSS

**FILED & ENTERED**

**OCT 09 2018**

CLERK U.S. BANKRUPTCY COURT  
 Central District of California  
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**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:	)	Chapter No. 7
	)	
SHARON KELLY AKA SHARON K.	)	Case No. 2:17-bk-17863-RK
KELLY AKA SHARON KRIEGER,	)	Adv. No. 2:17-ap-01415-RK
	)	
Debtor.	)	STATEMENT OF
	)	UNCONTROVERTED FACTS AND
	)	CONCLUSIONS OF LAW IN
	)	SUPPORT OF MOTION FOR
MARK P. GROSS,	)	SUMMARY JUDGMENT
	)	
Plaintiff,	)	
v.	)	(L.B.R. 7056-1(b)(2))
	)	
SHARON KELLY, AKA SHARON K.	)	Date: <del>07/17/2018</del> 09/18/2018
KELLY, AKA SHARON KRIEGER,	)	Time: 11:00 a.m.
	)	Court: 1675
Defendant and Debtor	)	
	)	Assigned to: Judge Kwan
	)	
	)	

Pursuant to Rule 56 of Federal Rules of Civil Procedure and Local Bankruptcy Rule  
 7056-1(b)(2), the court adopts the following STATEMENT OF UNCONTROVERTED FACTS  
 AND CONCLUSIONS OF LAW IN SUPPORT OF MOTION OF PLAINTIFF MARK GROSS

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FOR SUMMARY JUDGMENT. All uncontroverted facts are supported by the Declaration of MARK P. GROSS, Electronic Case Filing Number (ECF) 67.

### I. STATEMENT OF UNCONTROVERTED FACTS

UNCONTROVERTED FACT	SUPPORTING EVIDENCE
1. Plaintiff is a family law specialist attorney practicing in California.	1. Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶ 2)
2. Plaintiff was appointed as Minor's Counsel to represent the interests of the minor child of Debtor Sharon Kelly, also known as Sharon Krieger (Debtor or KELLY), and her husband, Robert Krieger (KRIEGER), in their marital dissolution case, Case No. BD497003, before the Superior Court of California for the County of Los Angeles.	2. Not Disputed – Defendant's Statement of Genuine Issues of Material Fact, ECF 95, filed on 8/17/18; see also, Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶¶ 2 and 3, and its exhibits: ECF67, Exhibit 1: Los Angeles Superior Court (LASC) Order 6/9/2009, ECF67, Exhibit 2: LASC Order 6/16/2009, ECF67, Exhibit 3: Further Am. LASC Order 7/14/2009).
3. Plaintiff's appointment as Minor's Counsel was based on the findings of the Superior Court, based on the needs of the minor child and ability of the debtor to pay a portion of the fees.	3. Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶¶ 2 and 3, and its exhibits: ECF67, Exhibit 1: LASC Order 6/9/2009 ECF67, Exhibit 2: LASC Order 6/16/2009 ECF67, Exhibit 3: Further Am. LASC Order 7/14/2009).
4. After the Superior Court relieved Plaintiff of his duties as Minor's Counsel on October	4. Not Disputed – Defendant's Statement of Genuine Issues of Material Fact, ECF 95; see

1 2 3 4 5 6 7 8	15, 2010, the Superior Court re-appointed Plaintiff as Minor's Counsel on October 17, 2011.	also, Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶¶ 4 and 5, and its exhibits: ECF67, Exhibit 4: LASC Judgment 10/15/2010 ECF67, Exhibit 5: LASC Order and M.O. 10/17/2011).
9 10 11 12 13 14	5. Plaintiff's re-appointment as Minor's Counsel was based on the findings of the Superior Court, based on the needs of the minor child and ability of Debtor to pay a portion of the fees.	5. Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶ 5, and its exhibits: ECF67, Exhibit 5: LASC Order and M.O. 10/17/2011).
15 16 17 18 19 20	6. Debtor was ordered to pay 50% of the Plaintiff's fees incurred as Minor's Counsel.	6. Not Disputed – Defendant's Statement of Genuine Issues of Material Fact, ECF 95; see also, Declaration of Mark P. Gross (ECF67 pp. 18-21, ¶ 7, and exhibit: ECF67, Exhibit 7: LASC Order 12/14/2012).
21 22 23 24 25 26 27	7. The Superior Court Judge received evidence and argument in the form of declarations and memoranda of points and authorities GROSS'S REQUEST FOR ORDERS (RFO), and opposition declarations and points and authorities from Plaintiff and	7. (a) Declaration of Mark P. Gross, ECF67 pp. 20-21, ¶¶10-12 and exhibit thereto; ECF67, Exhibit 8 (ECF 67, pp. 73-77): LASC Order 3/16/2015 Ruling on Submitted Matter;

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Debtor, on the issues as to whether the fees  
were for representation as Minor's Counsel,  
as to reasonableness, and as to accuracy of  
the fees.

(b) Decl. of Mark P. Gross ECF68, and  
Exhibits 10, 11, 12, 13, 14, 15 thereto:

(i) ECF68, Exhibit 10, p.25: MARK  
GROSS Request for Order (fee

application) and supporting

declarations 8/14/2014, (NOTE

**ECF68 Ex.10 pp.75-78 is a chart**

**submitted in evidence in state court**

**action showing how all payments**

**were allocated from 7/1/2009 to**

**7/31/2014 including the community**

**property-sourced payments from**

**Mr. Krieger); and**

Jill Street's notice of errata 9/12/2014;

(ii) ECF 68, Exhibit 11 p.86, 90:6-

**92:14) Defendant KELLY**

**Petitioner's Opposition Declaration**

**(on the issue of the application of the**

**alleged Community Property (CP)**

**payments) and 92:17-28 (on the issue**

**of ability to pay);**

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and Defendant KELLY'S Points and Authorities ECF68, Ex.11, pp100-106:19 (on ability to pay) and ECF68, Ex.11, pp. 106:19-109:14 (on the alleged CP payments) and Exhibits (Income and Expense Declaration of KELLY on the ability to pay issue) at ECF68, Ex.11-pp 113-116, 159-161, 163-164 (escrow stmt). Ex. 6 (ECF68, Ex.11 pp328-332) on CP payments issue.

(iii) ECF 68, Exhibit 12, p.366-396: KRIEGER'S Further Response to Minor's Counsel Motion and the Court's Tentative Ruling 12/21/2014 opposing KELLY'S position on the source of payments and ability to pay.

(iv) ECF68, Exhibit 13, pp397-550 KELLY'S Responsive Declaration & P&A to Minor's Counsel Request for Order, **Petitioner's (KELLY) Audit**

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**and Objections to Minors Counsel**

**Mark Gross's billing** 2009 to present 12/22/2014, legal argument and declaration testimony challenging of GROSS'S accuracy and reasonableness of fees charged (ECF 68, Ex.13, pp. 400:20-424:22) and **argument and testimony by declaration on the CP payments issue ECF 68, Ex.11, pp. 425:1-426:19** and ECF 68, Ex.11, pp430:20-432:20 (on issue of reasonableness of fees)

(v) Exhibit 14 (ECF68, Ex. 14, pp. 551 Respondent's (KRIEGER) Analysis of Petitioner and Attorney Schwartz's Financial Statements and Request for Legal Fees 12/31/2014 (responding to KELLY on need and ability, and the audit)

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	(vi) ECF 68, Ex.15, pp.613) KRIEGER'S Further Response to Minor's Counsel's Motion
<b>8. The Superior Court Judge received evidence and argument in the form of declarations and memoranda of points and authorities from both Plaintiff and Debtor over how to allocate the payments from Robert Krieger which Debtor claims were from community property sources and should have been allocated in part to her.</b>	8. (a) ECF 77, Ex. C, p.93 Decl. of Sharon Kelly (Transcript of 2/27/2015) on issues reasonableness and ability to pay ECF77, Ex. C, pp.93, 96:3-97:10; spreadsheets on how payments applied and amount owed by each – ECF77 pp97:15-98:28, 98:18-22, 99:9-104:9, AND (b) Decl. of Mark P. Gross ECF68, and Exhibits 10, 11, 12, 13, 14, 15 thereto:  (i) ECF68, Exhibit 10, p.25: MARK GROSS Request for Order (fee application) and supporting declarations 8/14/2014, (NOTE ECF Ex.10 pp.75-78 is a chart submitted in evidence in state court action showing how all payments were allocated from

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7/1/2009 to 7/31/2014 including the  
community property-sourced  
payments from Mr. Krieger); and  
Jill Street's notice of errata 9/12/2014

(ii) ECF 68, Exhibit 11 p.86, 90:6-  
92:14) Defendant KELLY  
Petitioner's Opposition Declaration  
(on the issue of the application of the  
alleged CP payments) and 92:17-28  
(on the issue of ability to pay)  
and Defendant KELLY'S Points and  
Authorities ECF68, Ex.11, pp100-  
106:19 (on ability to pay) and ECF68,  
Ex.11, pp. 106:19-109:14 (on the  
alleged CP payments) and Exhibits  
(Income and Expense Declaration of  
KELLY on the ability to pay issue) at  
ECF68, Ex.11-pp 113-116, 159-161,  
163-164 (escrow stmt). Ex. 6 (ECF68,  
Ex.11 pp328-332) on CP payments  
issue.

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(iii) ECF 68, Exhibit 12, p.366-396:  
KRIEGER'S Further Response to  
Minor's Counsel Motion and the  
Court's Tentative Ruling 12/21/2014  
opposing KELLY'S position on the  
source of payments and ability to pay.

(iv) ECF68, Exhibit 13, pp397-550  
KELLY'S Responsive Declaration &  
P&A to Minor's Counsel Request for  
Order, **Petitioner's (KELLY) Audit  
and Objections to Minors Counsel  
Mark Gross's billing 2009** to present  
12/22/2014, legal argument and  
declaration testimony challenging of  
GROSS'S accuracy and reasonableness  
of fees charged (ECF 68, Ex.13, pp.  
400:20-424:22) and **argument and  
testimony by declaration on the CP  
payments issue ECF 68, Ex.11, pp.  
425:1-426:19** and ECF 68, Ex.11,  
pp430:20-432:20 (on issue of  
reasonableness of fees)

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1	9. After receiving evidence in the form of	9. Decl. of Sharon Kelly, ECF77 and exhibits
2	declarations, memoranda of points and	thereto:
3	authorities, and exhibits from KELLY,	ECF77, Exhibit C, p.93 (Transcript of
4	GROSS and KRIEGER, the Superior Court	2/27/2015): reasonableness and ability to pay
5	held a hearing on February 27, 2015, on the	ECF77, pp.93, 96:3-97:10; <b>spreadsheets on</b>
6	issues of reasonableness, accuracy, <b>and the</b>	<b>how payments applied and amount owed</b>
7	<b>allocation of the allegedly community</b>	<b>by each – ECF77 pp97:15-98:28, 98:18-22,</b>
8	<b>property payments, and was presented</b>	<b>99:9-104:9.</b>
9	<b>with a spreadsheet showing how the</b>	
10	<b>payments were applied.</b>	
11		
12	10. At the hearing before the Superior Court	10. ECF77, Exhibit C, pp.98:4-104:9
13	on February 27, 2015, KELLY's counsel, and	(Transcript of 2/27/2015 Page:Line no. 5:4-
14	GROSS presented argument regarding the	11:9)
15	hourly rate being charged, the allocation	
16	issue, need and ability to pay and	
17	reasonableness and accuracy of the Minor's	
18	Counsel Request for Order.	
19		
20	11. At the hearing before the Superior Court	11. ECF77, Exhibit C, pp.118:23-124:3
21	on February 27, 2015, Link K. Schwartz	(Transcript of 2/27/2015 Page:Line. 25:23 –
22	(SCHWARTZ), KELLY's counsel, and	31:3)
23	GROSS presented argument regarding	
24	<b>application of the alleged community</b>	
25	<b>property sourced payments made by</b>	
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1	KRIEGER, with KELLY arguing that	
2	GROSS had not properly credited KELLY for	
3	payments made.	
4	12. SCHWARTZ argued at the hearing that	12. Not Disputed – Defendant’s Statement of
5	KELLY was entitled to credit for \$85,914.19	Genuine Issues of Material Fact, ECF 95; see
6	on account of payments made by KRIEGER	also, ECF 77, Exhibit C, pp. 123 (Transcript
7	from alleged community funds.	of 2/27/2015 Page:Line no. 30:26)
8		
9	13. SCHWARTZ also argued that it was	13. Not Disputed – Defendant’s Statement of
10	KRIEGER who was misusing community	Genuine Issues of Material Fact, ECF 95; see
11	assets to pay a separate property debt,	also, ECF 77, Exhibit C, pp. 122 (Transcript
12	because each of the parties separately owes	of 2/27/2015 Page:Line no. 29:2-29:8)
13	the debt to Minor’s Counsel.	
14		
15	14. The <b>Superior Court Judge ruled on the</b>	14. ECF 77, Exhibit C, pp. 125 (Transcript of
16	<b>issue of adjustment of the alleged</b>	2/27/2015 Page:Line no. 32:3-10)
17	<b>community payments</b> by stating “...we can,	
18	for purposes of, you know, releasing minor’s	
19	counsel from this case as long as there is an	
20	amount that.....is adjudged or agreed to be	
21	how much he is owed. <b>If there are then</b>	
22	<b>credits or reimbursements from one party</b>	
23	<b>or the other, that could be done down the</b>	
24	<b>road.”</b>	
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15. KRIEGER stated on the record that <del>some</del> community funds were used to pay Minor's Counsel, but argued that those were allocated earlier in the case by the previous Judge Shaller with whom he did not agree.	15. Not Disputed – Defendant's Statement of Genuine Issues of Material Fact, ECF 95; see also, ECF77, Exhibit C, pp. 131:17-22, 135:20-136:4 (Transcript of 2/27/2015 Page 38:17-21, 42:20-43:4).
16. The Superior Court Judge ruled that there were no further reserved issues on GROSS'S Request for Order, rejecting a request by SCHWARTZ for further reserved issues.	16. Not Disputed – Defendant's Statement of Genuine Issues of Material Fact, ECF 95; see also, ECF 77, Exhibit C, pp. 143:23-28 (Transcript of 2/27/2015 Page:Line no. 50:23-28).
17. <b>On March 16, 2015, the Superior Court Judge determined that KELLY owed GROSS \$70,900.58 and awarded him that amount, as and for minor's counsel fees against the debtor, thereby accepting GROSS'S method of accounting for the payments received, and rejecting KELLY'S arguments about crediting her with half of certain payments.</b>	17. ECF 67, Exhibit 8 (ECF 67, pp. 73-77): LASC Order 3/16/2015 Ruling on Submitted Matter.
18. Omitted.	18. Omitted
19. Omitted.	19. Omitted.

## II. CONCLUSIONS OF LAW

CONCLUSIONS OF LAW	SUPPORTING AUTHORITY
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1	1. The Court may grant summary judgment on	1. Fed. R. Civ. P. 56(a)
2	each claim on which it is sought if the moving	
3	party establishes that “there is no genuine	
4	dispute as to any material fact and movant is	
5	entitled to judgment as a matter of law.”	
6		
7	2. An issue of material fact is only “genuine”	2. <i>Farris v. City of Riverside</i> 667 F. Supp. 2d
8	if the evidence permits a reasonable fact finder	1151, 1155 (C.D. Cal. 2009)
9	to “return a verdict for the nonmoving party.”	
10		
11	3. Omitted.	3. Omitted.
12		
13	4. The court has jurisdiction over	4. 28 U.S.C. §§157(b)(2)(I) and 1334, In re
14	determinations of dischargeability of debt.	<i>Jodoin</i> , 209 B.R. 132 (9th Cir. BAP 1997).
15		
16	5. Nondischargeable Domestic Support	5. 11 U.S.C. §§ 101(a)(14A) and 523(a)(5).
17	Obligation includes a debt which is in the	
18	nature of support.	
19		
20	6. The Superior Court’s determination that	6. <i>In re Harmon</i> , 250 F.3d 1240, 1245 (9 <sup>th</sup> Cir.
21	Debtor owes Plaintiff for her share of the	2001), citing, <i>Lucido v. Superior Court</i> , 51
22	attorneys’ fees as Minor’s Counsel has	Cal.3d 335, 341 (1990); <i>In re Bugna</i> , 33 F.3d
23	collateral estoppel effect because the issue of	1054, 1057 (9 <sup>th</sup> Cir. 1994), citing, 28 U.S.C.
24	Debtor’s liability for Plaintiff’s fees as	§1738.
25	Minor’s Counsel is identical to the one	
26	decided in Debtor’s marital dissolution case	
27	before the Superior Court, that issue was	
28	actually litigated in that proceeding, that issue	

1 was necessarily decided in that proceeding, the  
 2 Superior Court's determination is final and on  
 3 the merits and the party against whom  
 4 preclusion is sought, Debtor, is the same in the  
 5 prior proceeding.  
 6

7 7. Fees that are payable by a party in a marital  
 8 dissolution action to a professional for  
 9 services incurred for and on behalf of that  
 10 party's minor children is in the nature of  
 11 support.  
 12

7. In re *Chang* 163 F.3d 1138 (9th Cir. 1998).

13 8. Attorneys' fees payable to Plaintiff as  
 14 Minor's Counsel are in the nature of child  
 15 support and thus nondischargeable in  
 16 bankruptcy.  
 17

8. In re *Peters*, 964 F.2d 166 (2nd Cir. 1992);  
 11 U.S.C. §§ 101(a)(14A) and 523(a)(5).

18 9. A debt to a spouse, former spouse, or child  
 19 of the debtor and not of the kind described in  
 20 paragraph (5) that is incurred by the debtor in  
 21 the course of a divorce or separation or in  
 22 connection with a separation agreement,  
 23 divorce decree or other order of a court of  
 24 record  
 25

9. 11 U.S.C. § 523(a)(15).

26 10. That a court award of attorneys' fees and  
 27 costs to an attorney for a non-debtor former  
 28

10. In re *Tritt*, 2014 WL 1347763 (Bankr. E.D.  
 Tex. 2014).

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spouse in post-divorce litigation between the parties should be construed as a debt of the former spouse. "Whether a fee is due to a former spouse or to the attorney of a former spouse has been determined to be irrelevant..."

11. Attorneys' fees and costs awarded "in connection with" a divorce decree or other order of a court of record, as that term is used in §523(a)(15), are nondischargeable under 11 U.S.C. § 523(a)(15)

11. 11 USC § 523(a)(15); In re *Tritt*, 2014 WL 1347763 (Bankr. E.D. Tex. 2014); In re *Prensky*, 416 B.R. 406, 409-412 (Bankr. D. N.J. 2009), In re *Adam*, 2015 WL 1530086 (9<sup>th</sup> Cir. BAP 2015).

12. Interest on a nondischargeable debt is also nondischargeable.

12. In re *Gosney*, 205 B.R. 418 (9<sup>th</sup> Cir. BAP 1996).

13. Interest on a debt which arose under state law bears interest governed by state law.

13. In re *Niles*, 106 F.3d 1456, 1463 (9<sup>th</sup> Cir. 1996).

IT IS SO ORDERED.

###

Date: October 9, 2018



Robert Kwan  
United States Bankruptcy Judge

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